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July 31, 2023

BY: ECF

Hon. Jennifer E. Willis
United States Magistrate Judge
40 Foley Square, Room 228
United States Courthouse
New York, NY 10007

**Re: El Nabi v. City of New York
21-cv-03768 (LAK) (JW)**

Dear Hon. Judge Willis,

We represent Plaintiff Hassab El Nabi in the above referenced matter. We write to request leave to file a sur-reply to prior counsel's reply or in the alternative, ask the court to strike prior counsel's reply. While the undersigned hesitates to prolong resolution of this issue and the matter as a whole, prior counsel's reply is improper and therefore warrants a response from substitute counsel.

While still not denying that he waived his charging lien, prior counsel has raised new arguments and attached substantial exhibits that were not included in his initial motion, although they were in his possession prior to his filing. Sur-replies are appropriate only in "the exceptional though rare case" when a "party demonstrates to the court that papers to which it seeks to file a reply raise new issues which are material to the disposition of the question before the court,"...*Int'l Bus. Machines Corp.*, 66 F.R.D. at 384. Sec. & Exch. Comm'n v. Xia, No.

21CV5350PKCRER, 2022 WL 2784871, at *1 (E.D.N.Y. July 15, 2022). Included in prior counsel's reply is a declaration from the assistant corporation counsel on the matter, which contains sweeping assumptions and conclusions that are material to the issue before the court. Substitute counsel needs the opportunity to address those statements which were presented to the court for the first time in said reply.

If the court is not inclined to grant substitute counsel leave to file a sur-reply, in the alternative, we ask the court to strike the exhibits and declaration of the assistant corporation counsel, Brian Francolla, from prior counsel's submission. "a court should not consider arguments that are raised for the first time in a reply brief." *Aviva Trucking Special Lines v. Ashe*, No. 18 Civ. 11180, 2019 WL 4387339, at *4 (S.D.N.Y. Sept. 13, 2019) (citation omitted). *P&G Auditors & Consultants, LLC v. Mega Int'l Com. Bank Co.*, No. 18-CV-9232 (JPO), 2019 WL 4805862, at *3 (S.D.N.Y. Sept. 30, 2019).

As always, we thank the court for its time and attention to this matter.

Respectfully Submitted,

/s/
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/s/
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